

Good Morning:

Today, we will begin to address that aspect of the "Client-Lawyer Relationship" governed by the conflict of interest rules. There are three of them: **Rule 1.7 Conflict of Interest: General Rule**; **Rule 1.8 Conflict of Interest: Prohibited Transactions**; and **Rule 1.9 Conflict of Interest: Former Client**. In addition, each of the rules makes cross-references to other rules.

We begin with the first part of **Rule 1.7**.

**Rule 1.7 Conflict of Interest: General Rule.**

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

- (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
- (2) each client consents after consultation.

**COMMENT:**

Loyalty is an essential element in the lawyer's relationship to a client. An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. If such a conflict arises after representation has been undertaken, the lawyer should seek to withdraw from the representation. See Rule 1.16 [*Declining or Terminating Representation*].\* Where more than one client is involved and the lawyer is permitted to withdraw because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by Rule 1.9 [Conflict of Interest: Former Client -- we will deal with this Rule in a future PCR]. See also Rule 2.2c [*Mediation*].\*\* As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 [*Diligence*].\*\*\*

As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without that client's consent. Paragraph (a) expresses the general rule. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only generally adverse, does not require consent... Paragraph (a) applies only when the representation of one client would be directly adverse to the other. ...

A client ... may consent to representation notwithstanding a conflict. However, as indicated in Rule 1.7(a)(1) with respect to representation directly adverse to a client ..., when a disinterested lawyer would conclude that the client should not

**agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement. ... Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the client to make an informed decision, the lawyer cannot properly ask the latter to consent. ...**

**While the lawyer must be careful to avoid conflict of interest situations, resolving questions of conflict of interest is primarily the responsibility of the supervisory lawyer... . See also Rule 5.1 [*Responsibilities of the Senior Counsel and Supervisory Lawyers*].**

**\* Rule 1.16 says in pertinent part: (a) Except as stated in paragraph (c) [i.e., when ordered otherwise by a tribunal or other competent authority], a lawyer shall not represent a client or, where representation has commenced, shall seek to withdraw from the representation of a client if: (1) the representation will result in violation of these Rules ... or other law or regulation ... .**

**\*\* Rule 2.2(c) says in pertinent part: (c) ... Upon withdrawal [as a mediator], the lawyer shall not represent any of the individuals in the matter that was the subject of the mediation unless each individual consents.**

**\*\*\* The COMMENT to Rule 1.3 says in pertinent part: Doubt about whether a client-lawyer relationship exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so.**

In the next PCR, we will continue with the second part of Rule 1.7.

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